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Attorneys for Defendant
JUSTIN GRAY

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
vs.
JUSTIN GRAY, et al.
Defendants.

Case No. 1:20-cr-00238-JLT-SKO

**REPLY TO OPPOSITION TO MOTION
FOR ORDER COMPELLING THE
GOVERNMENT TO DESIGNATE
EVIDENCE TO BE USED AT TRIAL
(MOTION, Doc. # 1123)**

Date: September 4, 2024

Time: 1:00 p.m.

Place: Courtroom 7, Hon. Sheila Oberto

Defendant Justin Gray, through counsel, has filed a motion for an order compelling the government to designate the items of physical and documentary evidence it intends to introduce at trial. Doc. # 1123. The government opposes the motion, arguing that “any such order regarding scheduling of the trial matters will be issued by the District Court” and that such an order is “neither practicable nor required by Rule 16.” Doc. # 1198.

Preliminarily, as recognized by the government, Doc. # 1198, 2, Mr. Gray notes that this motion was filed well before counsel for Kenneth Johnson filed a motion, pending before Judge Thurston and currently set for hearing on August 26, requesting a trial schedule. Doc. # 1180. While there may be some potential overlap with the broader

1 motion brought by the codefendant, Mr. Gray's request is for immediate disclosure and
 2 designation of evidence so that pretrial motions to suppress or exclude evidence can be
 3 brought in a timely fashion before trial, and is ripe for decision at this time.¹

4 This case is not a typical criminal case. Tens of thousands of pages of discovery,
 5 not to mention the extensive audio and video files, have been produced. The third
 6 superseding indictment (Doc. # 1098) charges eleven different defendants with thirteen
 7 separate counts alleged against different combinations of the defendants, including a
 8 racketeering (RICO) conspiracy charge, allegations of six murders in aid of racketeering,
 9 drug and firearm counts, forfeiture allegations, sentencing factors including additional
 10 criminal activities, an uncharged murder, three conspiracies to murder, plus a stabbing, an
 11 attempted arson, a robbery, a beating, episodes of drug distribution and firearm use, all
 12 occurring over a nine year period. Mr. Gray is only charged in two counts (two events
 13 that occurred at the same time), and large amounts of the material produced by the
 14 prosecution seem to be irrelevant to his charges, but sifting through this evidence is a
 15 daunting, enormous task.

16 Due process under the Constitution requires that a criminal defendant be given
 17 notice of the case the prosecution brings against him, and a reasonable time to review,
 18 investigate, and prepare a defense. "No better instrument has been devised for arriving at
 19 truth than to give a person in jeopardy of serious loss notice of the case against him and
 20 opportunity to meet it." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123,
 21 171-72 (1951)(Conc. opn. of Frankfurter, J.); see *Lankford v. Idaho*, 500 U.S. 110, 121-
 22 22 (1991). It appears that the government does not disagree with the need to advise the
 23 defendants of the evidence it intends to present, but is only resisting the need to produce
 24 this information now.

27 ¹ This motion is also properly brought before the Magistrate Judge. Local
 28 Rules 302(b)(1), 430.1(b).

1 In light of the nature of this case, and for the reasons discussed in the motion and
2 above, the requested order, accompanied with a reasonable date for compliance, should
3 be issued.

4 Dated: August 13, 2024

Respectfully submitted,

/s/ *James S. Thomson*

/s/ *Timothy J. Foley*

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